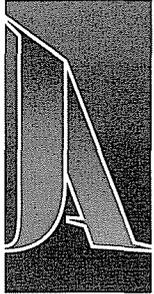


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LAW OFFICES

February 26, 2007

Ms. Beth O'Donnell, Executive Director
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, KY 40602

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PUBLIC SERVICE
COMMISSION

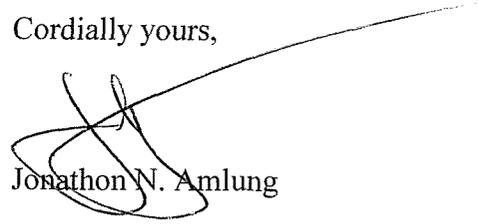
RE: Touchtone Communication, Inc., and ALEC, Inc. v.
Kentucky ALLTEL, Inc.,
Case No. 2005-00482

Dear Ms. O'Donnell:

Please find enclosed for filing an original and four (4) copies of ALEC's Direct Testimony of Mark Hayes on Behalf of ALEC, Inc., for filing in the above-referenced case.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions or concerns.

Cordially yours,



Jonathon N. Amlung

Enclosures

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FEB 27 2007

PUBLIC SERVICE
COMMISSION

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

TOUCHTONE COMMUNICATIONS, INC.)
and ALEC, Inc.,)
)
Complainants,)
)
vs.)
)
KENTUCKY ALLTEL, Inc.,)
)
Defendant.)

Case No.
2005-00482

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COMMISSION

Direct Testimony of

Mark Hayes

On Behalf of ALEC, Inc.

February 23, 2007

1 **Q. Please state your name and business address.**

2 A. My name is Mark I. Hayes. My business address is 250 West Main Street,
3 Lexington, Kentucky.

4 **Q. What is your position with ALEC, Inc.**

5 A. I am president of the company.

6 **Q. What is your professional background?**

7 A. I worked for eight years at Siemens-Stromberg Carlson in engineering; two years
8 at PRTC Telephone Co-op as a Central Office Engineer; four years for American
9 Communications as Operations Manager; three years for DURO Communications
10 as Director of CLEC Engineering and four years for ALEC, Inc., as President of
11 CLEC Operations.

12 **Q. What is the purpose of your testimony?**

13 A. The purpose of my testimony is to establish that Windstream Communications,
14 Inc., successor to Kentucky ALLTEL, Inc., failed to abide by the Interconnection
15 Agreement established between GTE South, Inc., and ALEC, Inc., formerly
16 known as Touchtone Communications, Inc. Further, the purpose of my testimony
17 is to establish that Windstream failed to act in good faith to resolve compensation
18 due to ALEC for the termination of Windstream traffic. This Commission
19 ordered Kentucky ALLTEL to honor existing interconnection agreements entered
20 into by its immediate predecessor, Verizon South, Inc.¹ Windstream has
21 acknowledged that the interconnection agreement between GTE South, Inc., and
22 ALEC is included in its commitment to Kentucky.

¹ *Approval of the Interconnection Agreement Negotiated by GTE South Incorporated and Touchtone Communications, Inc Pursuant to Sections 251 and 252 of the Telecommunications Act of 1996, KY PSC Case No. 1999-00318.*

23 **Q. Please give a brief synopsis of your testimony.**

24 A. Beginning in January 2002, ALEC invoiced Verizon South, Inc. for local and toll
25 traffic. Verizon disputed portions of the bills, but paid 1% (\$159,711.09) for toll
26 traffic termination between January and July 2002, as noted in Exhibit B to
27 ALEC's complaint.²

28 On July 31, 2002, Kentucky ALLTEL, Inc., acquired ownership of Verizon
29 South, Inc.'s wireline properties.³ ALEC continued invoicing Kentucky ALLTEL
30 in the same manner that it invoiced Verizon South from December 2002 until
31 ALLTEL sent notice on March 04, 2003, requesting ALEC to cease invoicing
32 Kentucky ALLTEL.⁴

33 ALEC then asked Richard McDaniel of McDaniel, Tinsley and Associates (MTA
34 Consulting) to work with ALLTEL to resolve this issue. Mr. McDaniel sent
35 correspondence to ALLTEL on March 06, 2003, and again sent an e-mail on
36 September 2, 2004 to Mandy Jenkins of ALLTEL in an attempt to resolve the
37 billing dispute. Unfortunately, this did not resolve our billing dispute.

38 Very little, if any, progress was made until ALEC hired attorney John Dodge in
39 November of 2004 to demand payment from ALLTEL. ALLTEL responded in
40 December 2004 by saying that it conducted its own investigation by making test
41 calls to the ALEC telephone numbers reflected in the billing records and
42 determined that 96% of the calls from ALLTEL destined for ALEC were

² Touchtone/Verizon Invoices for MOU spreadsheet, Exhibit B to the Complaint filed herein.

³ *Petition by ALLTEL Corporation to Acquire the Kentucky Assets of Verizon South, Incorporated*, KY PSC Case No. 2001-00399.

⁴ See exhibit B of ALLTEL response to PSC.

43 terminated to ISPs. ALLTEL has never given an explanation as to how it reached
44 this determination.

45 Throughout the course of this matter, ALLTEL has acknowledged owing money
46 to ALEC. The amounts of that debt, however, seem to change randomly over
47 time.

48 For instance, in March of 2003, Kentucky ALLTEL acknowledged owing ALEC
49 money in the amount of \$56,000.00. In response to our attorney's demand letter,
50 Kentucky ALLTEL acknowledged an amount due ALEC of \$64,998.99.

51 In a letter to the Commission in this case dated October 6, 2006, Windstream's
52 attorney, Mark Overstreet, stipulated that his client owed \$87,731.32 for the
53 periods of December 2002 thru August 2005. As late as January 2007,
54 Windstream acknowledged at least some type of debt and paid the amount of
55 \$56,421.56 to ALEC.

56 As a final note, Windstream recognizes compensation for ISP traffic in its
57 Interconnection Agreement with Cinergy Communications Company.⁵

58 **Q. When was ALEC established?**

59 A. ALEC was incorporated in Kentucky on April 28, 1997.

60 **Q. You were asked in data requests about the history of ALEC in terms of its
61 predecessors. Could you explain your answer in detail?**

62 A. ALEC was established in April of 1997 by Jeff Carneal and Jay Campbell in
63 Paducah, Kentucky. Duro Communications acquired ALEC, Inc. and other

⁵ Interconnection Agreement Between Kentucky ALLTEL, Inc. and Cinergy Communications Company, 00847-AI, Dated April 17, 2006.

64 CLECs between 1999 and 2001. The surviving entity was ALEC, Inc. DURO
65 Communications continued operations until December 2002.

66 On December 16, 2002, Duro Communications sold ALEC to Wispnet NC, LLC,
67 a North Carolina Corporation. Wispnet NC, LLC has 100% stock ownership and
68 continues to operate ALEC, Inc.

69 **Q. What is the DURO settlement group, and what authority, if any, did DURO**
70 **Settlement have to do anything on behalf of ALEC?**

71 A. I have no affiliation with the DURO Settlement Group and can only provide third
72 party details regarding this subject. DURO Settlement Group was formed during
73 the period of late 2002 in which DURO Communications was in the process of
74 selling its assets. DURO Settlement Group had no authority to act on behalf of
75 ALEC but was retained to secure the previously invoiced IntraLata PIU amounts
76 for the periods of August 2002 thru November 2002. This is supported by
77 numerous e-mails between Richard McDaniel of MTA Consulting and
78 Windstream/ Kentucky ALLTEL. These letters have been filed as exhibits within
79 this case.

80 Windstream maintains that the appropriate party-in-interest was compensated for
81 “all” claims prior to November 2002, yet when data requests requiring such proof
82 of compensation and settlement for that period in question, Windstream
83 acknowledges no such settlement document. In fact, Windstream/Kentucky
84 ALLTEL paid the DURO Settlement Group the amount of \$115,092.38 on March
85 09, 2005 for invoices dated August 2002 through November 2002 as noted on a
86 February 17, 2003 e-mail to Travis Jones of Kentucky ALLTEL.

87 **Q. Did ALEC provide termination services for Windstream and its**
88 **predecessors?**

89 A. Yes. The parties adopted an interconnection agreement in May of 1999. As
90 stated in the Complaint in this case, ALEC is seeking payment for two different
91 unpaid balances: (1) Reciprocal Compensation payments and (2) IntraLATA toll
92 payments. The Interconnection Agreement governs the terms and conditions for
93 termination of ISP-bound traffic, and treats it as local traffic. Specifically, Article
94 V, Section 3.2.3 of the Interconnection Agreement reads, in part:

95 **“Treatment of ESP/ISP Traffic.** Nevertheless, without waiving any of
96 its rights to assert and pursue its position on issues related to ESP/ISP
97 Traffic, each Party agrees that until the FCC enters a final, binding, and
98 non-appealable order (‘Final FCC Order’), the Parties shall exchange and
99 each Party may track ESP/ISP Traffic but no compensation shall be owed
100 for ESP/ISP Traffic exchanged between the Parties and neither party
101 shall bill the other for such traffic. At such time as a ‘Final FCC Order’
102 becomes applicable, the Parties shall meet to discuss implementation of
103 the Order and shall make adjustments to reflect the impact of the Order
104 including but not limited to adjustments for compensation required by the
105 Final FCC Order.....”

106 ALEC terminated 2,846,873,036 minutes of intrastate local and intralata toll calls
107 originating from Windstream/ALLTEL local exchange customers from June 2001
108 through December 2006.

109 **Q. Did ALEC send bills to ALLTEL?**

110 A. Yes, a summary of charges has been filed in this case, and I have attached an
111 additional summary to my testimony. In short, ALEC has billed ALLTEL a total
112 of \$9,164,350.51 for traffic. As of December 31, 2006, the total amount owed by
113 Windstream/ALLTEL to ALEC for reciprocal compensation was \$3,965,693.45.
114 The total amount owed for IntraLATA toll traffic as of that date was
115 \$5,198,657.06. Windstream continues to refuse to pay the balance due on these
116 amounts.

117 **Q. How were the amounts of those bills calculated?**

118 A. They were calculated pursuant to the PIU/PLU allocation tables contained in the
119 parties' Interconnection Agreement, and applying them to the traffic handled by
120 ALEC.

121 **Q. Is there an interest component to the unpaid balance of the bills?**

122 A. Yes. Allowable interest charges are set forth in the Interconnection Agreement.
123 As of August 2005, the total interest due was \$1,825,011.00.

124 **Q. Has ALEC been compensated for terminating this traffic?**

125 A. Windstream paid the amount of \$52,421.56 as a portion of undisputed amounts
126 for terminating access.

127 **Q. What amount is owed to ALEC?**

128 A. I will update this amount at the hearing of this case, as it is subject to change over
129 time. As of December 31, 2006, the total amount owed, excluding interest and
130 late fees, is \$9,164,350.51 less the payment of \$52,421.56 for a total of
131 \$9,111,928.95 excluding interest and late fees.

132 **Q. What was the reason given for lack of full payment of invoices?**

133 A. There were several. One reason is that ALEC is not the proper party-in-interest.
134 Another reason is that ALLTEL claims it conducted "test calls" to ALEC
135 telephone numbers reflected in the billing records, and determined that 96% of the
136 traffic was terminated to ISPs. Although ALEC contends that the FCC's *ISP*
137 *Remand Order*⁶ is final and non-appealable, ALLTEL claims that it is still
138 ongoing. This issue is addressed in our Complaint, and it will be briefed by our
139 attorneys as the Commission directs. We have never received a reason for
140 ALLTEL's failure to pay the undisputed portions of our invoices.

141 **Q. Who is Richard McDaniel and what was/is his role in this matter?**

142 A. Richard McDaniel was employed by DURO Communications during the periods
143 of 2000 thru November 2002. Mr. McDaniel formed MTA Consulting in 2003
144 and was retained by DURO Settlement group to retrieve monies owed by
145 Kentucky ALLTEL for the periods of August 2002 thru November 2002. Mr.
146 McDaniel was also retained by ALEC to perform certain duties of consultation in
147 advisement of CLEC activities. This engagement began in 2003 and continues
148 today in limited capacity. Mr. McDaniel did not have any authority to settle any
149 amounts due to ALEC.

150 **Q. What would you like the Commission to do in this case?**

151 A. ALEC is asking Commission to rule in its favor and order Windstream to make
152 immediate payment to ALEC for termination of traffic for the amounts identified
153 in my testimony as updated during the course of this case.

⁶ FCC 01-131, Order on Remand and Report and Order in CC Dockets Nos. 96-98: "In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996" and CC Docket 99-68: "Intercarrier Compensation for ISP-Bound Traffic." Released April 27, 2001.

154 **Q. Does this conclude your testimony?**

155 A. Yes.

2002 Summary			2003 Summary			2004 Summary		
Month	Total Minutes	Total Invoice	Month	Total Minutes	Total Invoice	Month	Total Minutes	Total Invoice
Jan	41,735,538	\$ 125,623.97	Jan	33,243,450	\$ 100,062.78	Jan	50,829,687	\$ 138,510.90
Feb	44,304,878	\$ 133,357.68	Feb	35,117,835	\$ 105,704.68	Feb	46,413,494	\$ 126,476.77
Mar	41,813,155	\$ 125,857.60	Mar	40,024,102	\$ 120,472.55	Mar	47,471,787	\$ 129,360.62
Apr	41,617,538	\$ 125,268.79	Apr	44,930,370	\$ 135,240.41	Apr	43,646,022	\$ 118,935.41
May	35,348,445	\$ 106,398.82	May	48,524,502	\$ 146,058.75	May	40,311,336	\$ 109,848.39
Jun	42,630,056	\$ 128,316.47	Jun	48,141,763	\$ 131,186.30	Jun	41,543,216	\$ 113,205.26
Jul	0	\$ 43,413.27	Jul	46,623,098	\$ 127,047.94	Jul	42,440,956	\$ 89,762.62
Aug	0	\$ 41,840.20	Aug	44,686,246	\$ 121,770.02	Aug	42,905,135	\$ 90,744.36
Sep	0	\$ 38,275.44	Sep	42,775,245	\$ 116,562.54	Sep	40,952,289	\$ 86,614.09
Oct	0	\$ 45,424.41	Oct	45,397,237	\$ 123,707.47	Oct	41,582,309	\$ 87,946.58
Nov	0	\$ 42,535.81	Nov	48,019,228	\$ 130,852.40	Nov	41,481,086	\$ 87,732.50
Dec	37,489,822	\$ 112,844.36	Dec	49,663,864	\$ 135,334.03	Dec	42,697,654	\$ 90,305.54
	284,939,432	\$ 1,069,156.81		527,146,940	\$ 1,493,999.89		522,274,971	\$ 1,269,443.04

2002 Local \$ 482,181.58 2003 Local \$ 408,077.19 2004 Local \$ 347,312.86
 2002 Intralata Toll \$ 586,975.23 2003 Intralata Toll \$ 1,085,922.70 2004 Intralata Toll \$ 922,130.19

Month	2005 Summary			2006 Summary			Grand Totals		
	Total Minutes	Total Invoice	Month	Total Minutes	Total Invoice	Month	Total Minutes	Total Invoice	Month
Jan	44,478,266	\$ 94,071.53	Jan	46,887,827	\$ 99,167.75	Jan	259,536,389	\$ 843,078.38	
Feb	40,820,456	\$ 86,335.26	Feb	42,582,687	\$ 90,062.38	Feb	251,365,644	\$ 825,991.44	
Mar	44,198,383	\$ 93,479.58	Mar	43,415,858	\$ 91,824.54	Mar	263,035,045	\$ 871,923.25	
Apr	41,308,782	\$ 87,368.07	Apr	37,894,536	\$ 80,146.94	Apr	250,055,419	\$ 821,114.83	
May	41,380,575	\$ 87,519.92	May	38,676,949	\$ 81,801.75	May	241,637,921	\$ 783,787.00	
Jun	44,281,619	\$ 93,655.62	Jun	36,930,453	\$ 78,107.91	Jun	252,336,644	\$ 679,722.80	
Jul	45,839,729	\$ 96,951.03	Jul	38,878,721	\$ 82,228.49	Jul	215,963,912	\$ 586,405.56	
Aug	38,799,650	\$ 82,061.26	Aug	36,902,461	\$ 78,048.71	Aug	235,071,326	\$ 769,572.11	
Sep	42,868,846	\$ 90,667.61	Sep	0	\$ -	Sep	197,685,958	\$ 677,980.18	
Oct	44,304,912	\$ 93,704.89	Oct	0	\$ -	Oct	211,364,351	\$ 745,602.45	
Nov	43,996,082	\$ 93,051.71	Nov	0	\$ -	Nov	209,650,862	\$ 737,726.82	
Dec	45,135,400	\$ 95,461.37	Dec	0	\$ -	Dec	259,169,564	\$ 831,445.67	
	517,412,702	\$ 1,094,327.87		322,169,493	\$ 681,388.48		2,846,873,036	\$ 9,164,350.51	

2005 Local \$ 344,079.45 2006 Local \$ 214,242.71 Local Grand Total \$ 3,965,693.45
 2005 Intralata Toll \$ 750,248.42 2006 Intralata Toll \$ 467,145.76 Intralata Grand Total \$ 5,198,657.06